

# alert

## TKU – UPDATING THE KNOWLEDGE

### 1 INTRODUCTION

Like London cabbies, in order to be roadworthy occupational pension scheme trustees must do “The Knowledge” by demonstrating that they have trustee knowledge and understanding (TKU) of pensions and trusts. They must likewise be “conversant” with scheme documents.

But like the quickest route from St Paul’s to Buckingham Palace, pensions knowledge is not fixed. The Pensions Regulator has therefore published a consultation<sup>1</sup> to refresh the TKU code of practice and scope guidance “to reflect changes in regulation, legislation, the market place and the focus of the regulator”. Nevertheless, the Regulator is keen to stress that it believes that both the code and scope guidance have stood the test of time since they were first introduced.

The consultation closes on 31 December 2008.

### 2 KEY POINTS

- The Regulator is consulting on a revised code of practice and updated scope guidance on TKU (section 4).
- But the key legislative requirements on TKU are not changing (section 4).
- Largely, the proposed amendments reflect the changing pensions landscape (section 5).
- In future, it may be necessary for trustees to be able to demonstrate their TKU by obtaining confirmation of participation in and understanding of training (section 6).

<sup>1</sup> <http://www.thepensionsregulator.gov.uk/whatsNew/pn08-24.aspx>

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### 3 BACKGROUND

The TKU requirements came into force on 6 April 2006. In summary, all occupational pension scheme trustees must have sufficient TKU of pensions and trusts law to be able to run their schemes properly. In addition, trustees must also be conversant (or familiar) with scheme documentation.

The TKU requirements written into the Pensions Act 2004 are backed by a code of practice published by the Regulator. The code has scope documents appended to it, which set out (in checklist form) key considerations for trustees.

Currently, there are separate scope documents for defined benefit schemes with associated defined contribution (DC) arrangements and DC schemes. As part of the consultation, the Regulator is proposing that a reduced scope document for small (12-99 members) fully insured DC schemes is adopted.<sup>2</sup>

### 4 CHANGE TO THE LEVEL OF TKU?

Each individual trustee must meet the required level of TKU. In contrast, directors of a corporate trustee only need to meet a level appropriate to enable them to “exercise the function in question”.

The 2007 Deregulatory Review<sup>3</sup> recommended that the TKU requirements should apply not to individual trustees, but to the whole board, bringing the law on TKU for individual trustees into line with the TKU requirements applied to a corporate trustee. But this proposal was explicitly rejected by the DWP’s response to consultation and has not been carried forward into the draft code.

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<sup>2</sup> Schemes with less than 12 members, where all the members are trustees, are generally exempt from the TKU requirements

<sup>3</sup> See our Sackers Extra Alert “Deregulatory Review – The Simple Life?” dated 27 July 2007

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The required level will vary according to the type of scheme and the role and expertise of the trustee in question; but the consultation paper makes it clear that the intention is that the level of TKU required has not changed. There is no expectation that trustees “should take on the mantle of an expert”, but rather that they have a level of TKU necessary to “understand the advice they are given by their professional advisers”.

However, it is important to bear in mind that some trustees may have additional or enhanced responsibilities. In particular, those in key positions such as the chair of trustees (or chair of the investment sub-committee) who hold themselves out as having particular expertise may need to be up to speed with all the relevant issues from day one. (In contrast, other newly appointed trustees generally have up to six months to meet the required level of TKU.)

## **5 THE CHANGING PENSIONS WORLD**

A number of amendments have been made to the scope documents to reflect the changing pensions landscape.

- There is an increased emphasis on sound administration – which ties in with the recently published consultation on record keeping – although the Regulator queries whether administration is really a TKU objective.
- A mention of the forthcoming Personal Accounts regime has been included.
- There are changes to the scope guidance on investments to reflect developments in investments since their introduction.
- The importance of the employer covenant (along with trustees’ understanding of their powers) is highlighted.
- Unsurprisingly, as one of the current hot topics in pensions, references to buy-out issues are now included.

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### 6 DEMONSTRATING EFFECTIVE LEARNING

It is important for trustees to be able to demonstrate that they have the necessary TKU to meet the relevant requirements.

Trustees will be pleased to know that this still does not mean they need to sit exams (!); rather, they should keep a record of any learning they do. The draft code makes it clear that, in future, trustees should be able to ask any provider of training for confirmation that the delegates have participated and understood the material covered.

The Regulator also highlights its free e-learning programme, the “trustee toolkit”<sup>4</sup>, aimed at helping trustees meet their TKU requirements. When trustees have done all the modules (and answered the questions correctly), they receive a “Certificate of Successful Completion”.

But this does not mean that trustees can rest on their laurels. The Regulator recommends that trustees review their TKU “at least annually” against the scope guidance and undertake learning to fill any gaps.

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<sup>4</sup> [www.trusteetoolkit.com](http://www.trusteetoolkit.com)